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Apple Inc.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ASHLEY GJOVIK,

Plaintiff,

v.

APPLE INC.,

Defendant.

Case No. 23-cv-4597-EMC

**[PROPOSED] ORDER GRANTING  
DEFENDANT APPLE INC.'S MOTION  
TO DISMISS PORTIONS OF  
PLAINTIFF'S FOURTH AMENDED  
COMPLAINT**

Dept: Courtroom 5, 17th Floor  
Judge: Honorable Edward M. Chen  
Date: August 22, 2024  
Time: 1:30 p.m.

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1 Pending before the Court is Defendant Apple Inc.'s Motion to Dismiss Portions of  
2 Plaintiff's Fourth Amended Complaint. Having considered the relevant papers and pleadings on  
3 file with the Court in this matter, as well as the arguments of counsel, the Court determines:

- 4 1. The Court **DISMISSES in part, with prejudice**, Plaintiff's Second Claim under Labor  
5 Code section 1102.5 to the extent it is based on alleged complaints about smuggling or  
6 sanctions violations because Plaintiff was not granted leave to introduce this new theory  
7 and, regardless, she does not identify any predicate statute she contends was violated, as is  
8 legally required to state a claim. The Second Claim is further dismissed in part to the extent  
9 that Plaintiff continues to allege that she complained about violations of entire statutory  
10 frameworks as opposed to specific statutes. Moreover, the Second Claim is dismissed in  
11 part to the extent it seeks civil penalties and is therefore time barred.
- 12 2. The Court **DISMISSES, with prejudice**, Plaintiff's Fourth Claim under the Hazardous  
13 Substances Information and Training Act ("HSITA") because Plaintiff was not granted  
14 leave to add it and, in any event, her alleged complaints did not concern "hazardous  
15 substances" within the meaning of HSITA.
- 16 3. The Court **DISMISSES, in part with prejudice**, Plaintiff's Fifth Claim under Labor Code  
17 section 98.6 to the extent it seeks civil penalties and is therefore time barred.
- 18 4. The Court **DISMISSES, in part with prejudice**, Plaintiff's Sixth Claim to the extent it  
19 asserts violations of Labor Code sections 232.5, 1101, and 1102 predicated on concerns  
20 allegedly raised about Palestinian and Muslim rights and an alleged article about working  
21 conditions for Uyghurs because not only was Plaintiff not granted leave to add this claim,  
22 but she also fails to allege a disclosure under Section 232.5, she fails to allege a "rule,  
23 regulation, or policy" under Section 1101, and she fails to allege that Apple threatened to  
24 discharge her if she did not adopt a particular course of political activity, as is required  
25 under Section 1102. Additionally, the Sixth Claim is dismissed in part to the extent it asserts  
26 violations of Sections 232 and 232.5 predicated on Plaintiff's alleged disclosure of her  
27 wages because Plaintiff does not plausibly allege that Apple knew about her alleged  
28 disclosure.

- 1       5. The Court **DISMISSES, with prejudice**, Plaintiff's Seventh Claim under Labor Code  
2       section 96(k) because there is no private right of action under that statute.
- 3       6. The Court **DISMISSES, with prejudice**, Plaintiff's Eighth Claim for breach of implied  
4       covenant to the extent that it relies on newly alleged theories Plaintiff did not have leave to  
5       introduce. Further, this claim is dismissed because Plaintiff fails to identify any underlying  
6       contract or term that would support any implied covenant that Apple allegedly breached by  
7       terminating Plaintiff.
- 8       7. The Court **DISMISSES, with prejudice**, Plaintiff's Ninth Claim under the California  
9       Unfair Competition Law because Plaintiff was not granted leave to amend to craft an  
10      entirely new theory of statutory standing, as she has attempted to do, and she nonetheless  
11      fails to establish any basis for statutory standing, which is dispositive of this claim whether  
12      styled as seeking restitutionary or injunctive relief. Moreover, Plaintiff would not be entitled  
13      to restitution because she alleges that she lost money to a third party but does not allege that  
14      Apple benefited, and would not be entitled to an injunction because she lacks Article III  
15      standing. Additionally, this claim is time barred.
- 16      8. The Court **DISMISSES, with prejudice**, Plaintiff's Tenth Claim for intentional infliction  
17      of emotional distress because much of the alleged conduct is not outrageous as a matter of  
18      law and the remaining alleged conduct does not meet the Federal Rule of Civil Procedure 8  
19      pleading standard or was deemed inadequate in the Court's May 20, 2024 Order.
- 20      9. The Court **DISMISSES, with prejudice**, Plaintiff's Eleventh Claim for private nuisance  
21      based on the alleged activities of Apple's facility at 3250 Scott Boulevard because it is time  
22      barred.
- 23      10. The Court **DISMISSES, with prejudice**, Plaintiff's Twelfth Claim for ultrahazardous  
24      activities, also based on the alleged activities of Apple's facility at 3250 Scott Boulevard,  
25      because it is time barred and because Plaintiff does not allege any ultrahazardous activities  
26      as a matter of law.
- 27      11. The Court **DISMISSES, with prejudice**, Plaintiff's Thirteenth Claim for intentional  
28      infliction of emotional distress premised on a fear of cancer because it is time barred, and

1 in any event, Plaintiff does not allege the intent element.

2 Accordingly, Defendant Apple Inc.'s Motion to Dismiss is **GRANTED**, and Plaintiff's  
3 fourth, seventh, eighth, ninth, tenth, eleventh, twelfth, and thirteenth claims are **DISMISSED with**  
4 **prejudice**, and Plaintiff's second, fifth, and sixth claims are **DISMISSED in part with prejudice**,  
5 as set forth above.

6  
7 **IT IS SO ORDERED**

8  
9 Dated: \_\_\_\_\_

\_\_\_\_\_  
HON. EDWARD M. CHEN  
U.S. DISTRICT COURT JUDGE